

**§ 361.86**

**34 CFR Ch. III (7–1–12 Edition)**

who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report "State Average Annual Pay" for the most recent available year).

(vi) *Performance Indicator 1.6.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who report their own income as the largest single source of economic support at the time they exit the VR program and the percentage who report their own income as the largest single source of support at the time they apply for VR services.

(2) *Equal access to services—(i) Performance Indicator 2.1.* The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(Approved by the Office of Management and Budget under control number 1820–0508)

(Authority: 29 U.S.C. 726(a))

**§ 361.86 Performance levels.**

(a) *General.* (1) Paragraph (b) of this section establishes performance levels for—

- (i) General or combined DSUs; and
- (ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) *Performance levels for each performance indicator.* (1)(i) The performance levels for Performance Indicators 1.1 through 1.6 are—

Performance indicator	Performance level by type of DSU	
	General/Combined	Blind
1.1 .....	Equal or exceed previous performance period.	Same.
1.2 .....	55.8% .....	68.9%.
1.3 .....	72.6% .....	35.4%.
1.4 .....	62.4% .....	89.0%.
1.5 .....	.52 (Ratio) .....	.59.
1.6 .....	53.0 (Math. Difference) .....	30.4.

(ii) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet

or exceed the performance levels established for four of the six performance indicators in the evaluation standard, including meeting or exceeding the performance levels for two of the three primary indicators (Performance Indicators 1.3, 1.4, and 1.5).

(2)(i) The performance level for Performance Indicator 2.1 is—

Performance indicator	Performance levels
2.1 .....	.80 (Ratio).

(ii) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (2)(iii) of this section.

(iii) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if fewer than 100 individuals from a minority population have exited the VR program during the reporting period, the DSU must describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

**§ 361.88 Reporting requirements.**

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the evaluation standards and performance indicators and include in this report the following RSA-911 data:

(1) The number of individuals who exited the VR program in each closure category as specified in the definition of "Exit the VR program" under § 361.81.

(2) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(3) The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(4) The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or

BEP employment with earnings at or above the minimum wage.

(5) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at the time they applied for VR services was "personal income."

(6) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was "personal income."

(7) The number of individuals exiting the VR program who are individuals from a minority background.

(8) The number of non-minority individuals exiting the VR program.

(9) The number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(10) The number of non-minority individuals exiting the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA-911 data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

(1) Are required by paragraph (a)(1) through (10) of this section; and

(2) Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. If a DSU fails to submit data that are valid, accurate, and in a consistent format within the 60-day period, the DSU must develop a program improvement plan pursuant to §361.89(a).

(Approved by the Office of Management and Budget under control number 1820-0508)

(Authority: 29 U.S.C. 726(b))

#### **§361.89 Enforcement procedures.**

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by §361.82(b), the Secretary and the DSU must jointly develop a program improvement plan that outlines the spe-

cific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available data and information related to the DSU's performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary may request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under §361.86(a)(2), the Secretary and the DSU must jointly modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the current performance levels over a period of more than 1 year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of the program improvement plan, the Secretary, consistent with the procedures specified in §361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Approved by the Office of Management and Budget under control number 1820-0508)

(Authority: 29 U.S.C. 726(b) and (c))

#### **APPENDIX A TO PART 361—QUESTIONS AND ANSWERS**

The following questions and answers provide a summary of some of the most common and critical questions that we received regarding this part 361 and the applicable responses. As is evident from the responses, we maintain that redefining the term "employment outcome" for purposes of the VR program to mean outcomes that occur in integrated settings will promote the provision of opportunities for all VR-eligible individuals to pursue the types of jobs that generally are available to the public.